No. 716

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# Supreme Court of the United States

OCTOBER TERM, 1952

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## (CCA No. 13,939)

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**AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,**

**Petitioners,**

**versus**

**SOUTHERN BUS LINES, INC.,**

**Respondents.**

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## PETITION FOR WRIT OF CERTIORARI.

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1952.**

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**(CCA No. 13,939.)**

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**AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,**

**Petitioners,**

**versus**

**SOUTHERN BUS LINES, INC.,**

**Respondents.**

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# PETITION FOR WRIT OF CERTIORARI.

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*To the Honorable the Chief Justice and the Associate Justices of the United States:*

NOW COME Amalgmated Association of Street, Electric Railway, and Motor Coach Employees of America, Division No. 1127, etc., et al., petitioners herein, and most respectfully pray this Honorable Court that a *Writ of Certiorari* be issued to review a final decision and decree of the United States Circuit Court of Appeals for the Fifth Circuit, rendered in a certain case pending

in said United States Circuit Court of Appeals, numbered 13,939, and styled Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Division No. 1127, etc., et al., appellants, now petitioners herein, against Southern Bus Lines, Inc., appellees, now respondent herein, by which final judgment the said United States Circuit Court of Appeals for the Fifth Circuit affirmed a judgment of the United States District Court for the Southern District of Mississippi, Hattiesburg Division, rendered against these petitioners and in favor of said respondent dismissing said cause for lack of Federal jurisdiction.

**Summary and Statement of Matters Involved.**

Jurisdiction of the Federal Court is predicated upon the provisions of the Norris-LaGuardia Act, Title 29, USCA, Sections 101-115, inclusive; The National Labor Relations Act, Title 29, USCA, Sections 151-166, inclusive, and the Labor Management Relations Act, Title 29, USCA, Sections 141-197, inclusive, in that:

(a) The Federal Court, by virtue of its general equity powers, has authority to grant the relief prayed for under the general provisions of the Norris-LaGuardia Act and the National Labor Relations Act, above cited.

(b) That the respondent herein committed acts constituting a breach of the contract sued upon, both prior and subsequent to the effective date of the Labor Management Relations Act, so that the procedural remedies specifically created by that Act, Title 29, USCA, Section 185 (a) are available to these petitioners in the Federal Courts.

This suit is for wages alleged to be due the employees of Southern Bus Lines, Incorporated, under the terms of a contract of employment which it is alleged was breached by Southern Bus Lines, Inc., said breach being a continuing breach; the parties to the contract being engaged in interstate commerce.

The contract was negotiated prior to May 16, 1946, between Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division No. 1127, representing the employees of Southern Bus Lines, Inc., and the Southern Bus Lines, Incorporated. It was effective May 16, 1946, and contained the following provisions:

> "This agreement shall take effect as of May 16, 1946, and shall remain in effect until May 16, 1947, and thereafter from year to year unless terminated or modified as herein provided. Either party desiring to terminate or modify this agreement at the expiration date of the initial term or of any annual extension shall notify the other party in writing of its desire to terminate or to enter into negotiations for changes at least thirty (30) days prior to the initial expiration date . . . ."

On April 14, 1947, which was more than thirty days before the expiration date of the initial term, the Union notified the Company as follows:

> ". . . we are hereby serving notice of our desire to enter into negotiations for changes in the agreement."

Shortly thereafter the Union's proposals for changes were submitted to the Company, and negotiations were begun between the Company's representatives and representatives of the Union; no agreement having been reached after continued negotiations, the Union requested that the issues be submitted to arbitration, under the following provisions of the contract:

> "Section 2. The Company agrees to meet and treat with the duly accredited officers and committees of the Association on all questions or differences relating to hours, wages, and working conditions, which may arise under the terms and conditions of this contract . . .
>
> "In the event of a failure to reach a mutually satisfactory adjustment through such oral hearing of any such question or difference within twenty (20) days from the date of the Company's written answer the same shall upon written request of either party to this agreement made within ten (10) days thereafter be submitted to a Board of Arbitration selected in the following manner:
>
> "The Company shall choose one Arbitrator, and the Association shall choose one Arbitrator, and if the two so chosen cannot enter upon a mutually satisfactory adjustment within fifteen (15) days after the selection of the second arbitrator, they shall immediately select a third arbitrator. In the event, however, said arbitrators chosen by the Company and the Association fail to agree upon a third Arbitrator within forty-eight (48) hours, the Director Conciliation Service, U. S. Department of Labor, shall be requested forthwith to appoint said third arbitrator . . ."

Meanwhile, the initial term of the contract expired, but because of the automatic renewal clause therein—the contract not having been either terminated or modified according to its terms—the contract remained in force and effect, and the employees continued to work under the conditions and terms stipulated therein for several days thereafter; however, the Company flatly refused to submit the differences which had arisen between the Union and itself over wages, hours and working conditions, to arbitration as the contract clearly provided should be done, and a strike vote was taken, the result being that a strike was called, effective May 20, 1947. This strike, the Union and its membership contend, was the only legitimate means at hand for immediate use by the Union to induce the Company to comply with its agreement and its legal duty to negotiate in good faith for modification of the contract, which included the duty to arbitrate in the event other negotiations failed.

At the time the strike action was taken on May 20, 1947, by the Union, the Labor Management Relations Act, known as the Taft-Hartley Law had not been enacted by Congress; that Act was adopted on June 23, 1947, effective August 23, 1947.

On November 10, 1947, this suit was filed in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, seeking damages by way of recovery of wages due the striking employees under the existing contract. (Record pages 3-99, inclusive.) On December 20, 1947, a companion suit based

on the same facts seeking relief by way of mandamus to compel arbitration under the terms of the contract, was filed in the same District Court. That suit is here referred to because an identical petition for *Writ of Certiorari* in that cause is filed concurrently with this petition, involving identical questions. Both cases were tried simultaneously by the District Court and the appeals therein passed on at the same time by the United States Circuit Court of Appeals for the Fifth Circuit. All proceedings in both causes were the same, and identical opinions and orders were rendered therein by the Circuit Court of Appeals. The companion case is numbered 13,-940, United States Circuit Court of Appeals for the Fifth Circuit, and all arguments herein made are applicable to that cause also.

When the suits were originally filed in the District Court, the Respondent moved the Court to dismiss them for the following reasons:

(a) for lack of venue and on the ground of *forum non conveniens.*

(b) for lack of jurisdiction of the parties and the subject matter.

(c) for failure to state a cause of action.

The District Court thereupon dismissed both causes for lack of venue and on the ground of *forum non conveniens.* (Record pages 123-124.) The opinion of the Court is embodied in the order of dismissal.

On appeal to the Circuit Court of Appeals for the Fifth Circuit, this judgment of the District Court was reversed, the opinion of the Court being reported in 172 Fed. 2d, 946. A copy of that opinion appears as Appendix "A" to this petition.

At a subsequent hearing by the District Court after remand, the District Court considered only two questions which had been raised by the Respondent and dismissed this cause for the reasons, as adopted by the District Court, that:

(a) the contract had been terminated by the Union's notice of its desire to negotiate for modification thereof, and

(b) that the strike action on the part of the Union terminated the contract.

The opinion of the District Court in dismissing this cause is set out at pages 131-142 of the Record, and the order of the Court appears at page 142 of the Record.

The companion case was also dismissed by the District Court.

On appeal to the Circuit Court of Appeals, from this second order of the District Court, the two questions above referred to upon which that order was based were not considered by the Appellate Court, which remanded the causes to the District Court with direction to dismiss for lack of jurisdiction. The Fifth Circuit Court of Appeals based its order upon the reasoning set out in its opinion in the companion case above referred to,

which is reported in 189 Fed. 2d. 219; a copy of the decision rendered in the companion case (USCCA 5, No. 13,389) appears as Appendix "B" to this petition, and a copy of the decision rendered in this cause based thereon, appears as appendix "C" to this petition.

After remand, petitioners herein moved to amend their original bill of complaint, as shown by proposed amendment (Record, pages 161-165). The District Court held that the motion was timely made, but that it contained no additional jurisdictional facts not already considered by both the District Court and the United States Circuit Court of Appeals; that the District Court was bound by the direction of the Circuit Court of Appeals to dismiss both cases and, accordingly, same were dismissed, the order of the District Court appearing at pages 168-169 of the Record.

From this order an appeal was taken to the United States Circuit Court of Appeals for the Fifth Circuit, which affirmed the action of the District Court and dismissed the causes on January 14, 1953. Copy of the opinion of the United States Circuit Court of Appeals, Fifth Circuit, dismissing this cause and the companion case, appears as Appendix "D" to this petition, the decision being reported in Vol. 201 Fed. 2d. 53.

**Jurisdiction of the Court.**

1.

Jurisdiction of this Court arises under Title 28, USCA, Section 1254, which provides in part:

> "Cases in the Court of Appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By Writ of Certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree."

2.

The judgment of which review is sought is a final judgment by the United States Circuit Court of Appeals for the Fifth Circuit.

3.

The judgment sought herein to be reviewed became final on January 14, 1953.

4.

The federal questions of substance which petitioners claimed in and which were denied by the United States Circuit Court of Appeals is:

(a) Under Title 29, USCA, Sections 101-115, inclusive, and Title 29, USCA, Sections 151-166, inclusive, known respectively as the Norris-LaGuardia Act and the Wagner-Connery Act, certain substantive rights were guaran-

teed to members of labor organizations engaged in an industry affecting commerce, relating to organization, collective bargaining, and the right to strike. These enactments are in mandatory language and absolutely require compliance therewith by the employer as well as the employee. The rights guaranteed to the employees are rights arising under the laws of the United States; the contract here is not a simple contract between individuals, but is a contract controlled by the mandatory provisions of the laws of the United States above referred to, enacted by Congress as a matter of public concern; and where the contract was violated, as charged in the bill of complaint, the Federal Courts, by virtue of their general equity powers, have jurisdiction to enforce the proper remedy, even in the absence of a specific provision to that effect.

(b) Title 29, USCA, Section 185 (a) which is a part of the Labor Management Relations Act enacted on June 23, 1947, effective August 23, 1947, provides that suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, may be brought in the District Court of the United States having jurisdiction of the parties. The refusal of the Company to comply with the terms of the contract was a continuing violation thereof, beginning in May, 1947 and continuing up to the date of the filing of these suits, one on November 10, 1947, and the other on December 20, 1947; and because of such continuing violation past the effective date of the Taft-Hartley Act, otherwise known as the Labor Management Relations Act, jurisdiction to try these causes was vested

he Federal Courts by virtue of Title 20, Section 85 USCA, above referred to.

c) The proposed amendment to the original bill of plaint, disallowed by the Court below (Record pages -185), alleges affirmative acts by the employer in viola- of the contract, after the effective date of the Taft- tley Law, in that negotiations relative to the contract e carried on subsequent to that date, and that Re- ndent refused during all of that time to comply with terms of the contract, and because of such violation he subsisting contract, after the effective date of the or Management Relations Act, the Federal Courts vested with jurisdiction to try these suits for viola- of the contract, as provided by said Section 185 , USCA, Title 29.

**The Questions Presented.**

he following questions are hereby presented for re- w:

. The question presented is one of jurisdiction, to- : does the United States District Court have jurisdic- n under the law to try this cause under the essential ts alleged?

. Does the United States District Court have jurisdic- n either under the Norris-LaGuardia Act, Title 29, CA, Sections 101-115, inclusive; the National Labor ations Act, Title 29, USCA, Sections 151-166, inclusive; the Labor Management Relations Act, Title 29, USCA, tions 141-197, inclusive, to try these causes as filed?

3. Where the complaint alleges facts showing the present existence of a contract of employment negotiated by a labor union with an employer engaged in industry affecting commerce, such contract having been negotiated and made effective prior to the effective date of the Labor Managment Relations Act, and further alleges that both prior and subsequent to the effective date of that Act the employer, during negotiations relative to said contract, refused to arbitrate differences arising thereunder, in conformity with a specific provision therein for arbitration of such differences, and such allegations are not denied, does the Federal Court have jurisdiction, either under the laws antecedent to the Labor Management Relations Act, or under that Act, of a suit for wages due under the contract, and of a suit to compel arbitration of those differences according to the terms of the contract?

**Reasons Relied Upon For The Allowance Of The Writ.**

1. The decision in this case by the Circuit Court of Appeals involves a question of Federal jurisdiction which is of general importance, and which has not been, but should be, settled by this Court.

2. The question of jurisdiction and venue under the Labor Management Relations Act of a cause involving the violation of a pre-existing contract, or the continuing violation of such a contract, is an important question of Federal law which has not been but should be determined by this Court.

3. Where the Circuit Court of Appeals dismisses a cause because of lack of Federal jurisdiction, the ag-

grieved party has an inherent right to have this Court determine the question of Federal jurisdiction *vel non.*

Decisions supporting petitioners' request for *Writ of Certiorari* on these grounds are:

*Brooklyn Sav. Bank vs. O'Neill,* 65 S. Ct. 895; 324 U. S. 697, 89 L. Ed. 1296.

*Del Veechio vs. Bowers,* 56 S. Ct. 190, 296 U. S. 280, 80 L. Ed. 229.

*Ex Parte Lau Ow Bew,* 12 S. Ct. 43, 141 U. S. 583, 35 L. ed. 868.

**Prayer.**

Your petitioners respectfully submit that the *Writ of Certiorari* shall issue to the United States Circuit Court of Appeals for the Fifth Circuit in said cause to the end that this Court may review said cause and same may be determined by this Court, as provided by law, and that your Petitioners may have such other and further relief or remedy in the premises as the Court may see appropriate and that the said judgment of the United States Circuit Court of Appeals for the Fifth Circuit be reversed by this Honorable Court.

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

### Statement of the Case.

A concise statement of the case is set forth in the foregoing petition under the heading "Summary and Statement of Matters Involved," and in the interest of brevity, is adopted here by reference. Appendices to the Petition contain all opinions and orders of the Court below and the District Court, other than those which appear in the Record.

### Specifications of Error.

Under "JURISDICTION OF THE COURT," Section 4, Subsections (a), (b) and (c), and under "THE QUESTIONS PRESENTED," petitioners have set out their contentions as to Federal jurisdiction of this cause, and the companion cause, and they are, briefly, as follows:

1.

The Federal Court, by virtue of its general equity powers, has authority to grant the relief prayed for.

2.

The Federal Court has jurisdiction to try this cause by virtue of Section 185 (a) USCA, Title 29, which reads as follows:

> "Section 185. Suits by and against labor organizations—Venue, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

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## ARGUMENT AND AUTHORITIES.

### Specification of Error No. 1.

It is essential in considering this phase of Petitioners' contention, to keep in mind the announced policy of Congress in the enactment of the various statutes dealing with the employer-employee relationship and affecting commerce, including those statutes herein specifically relied upon, and the impact of those statutes upon the rights of employers, employees, and the public welfare. That policy was first announced in Section 102, Title 29, USCA, which is a part of the Norris-LaGuardia Act of 1932, and reads as follows:

"Section 102. Public Policy in labor matters declared.

"In the interpretation of Sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted. Mar. 23, 1932, c. 90, Sec. 2, 47 Stat. 70."

In 1935, when the National Labor Relations Act was enacted, Congressional intent and policy was announced in Sec. 151, Title 29, USCA, in the following language:

"The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the ef-

ficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proven that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is declared to be the policy of the United States to eliminate the causes of certain substantial ob-

> structions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. July 5, 1935, c. 372, Sec. 1, 49 Stat. 449."

Thereafter, by Section 157, Title 29, USCA, being a part of the National Labor Relations Act, it was provided as follows:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. July 5, 1935, c. 372, Sec. 7, 49 Stat. 452."

Section 151, Title 29, USCA, *supra*, was carried forward and included in the Labor Management Relations Act in the same volume and under the same section number.

Both the National Labor Relations Act and the Labor Management Relations Act preserved the right to strike. Section 163, Title 29, USCA.

It is apparent from the foregoing that contracts of employment in industries affecting commerce, and the

refusal of either of the parties to abide by the terms of such contracts, were recognized by Congress as matters of great public concern. It seems to be an inescapable conclusion that where either party refuses to comply with the plain mandate of these laws, or violates a contract of employment entered into under the provisions of such laws, such refusal or violation is a proper subject for inquiry by the Federal Courts. In fact, this Court has so determined, as we believe, in the following cases:

*Virginian Ry. Company vs. System Federation No. 40, 300 U. S. 515, 61 L. ed. 769.*

*Texas & N. O. R. Co. vs. Brotherhood Ry. & S. S. Clerks, 281 U. S. 548-571, 74 L. ed. 1034.*

*Brotherhood of R. Trainmen vs. Toledo, Peoria and W. R. Company, 321 U. S. 50, 88 L. ed. 534, 64 S. Ct. 413.*

Many authorities supporting this contention are collected and cited in the opinions of this Court in the foregoing cases.

Respondents' contention herein is that the contract sued on is a simple contract, enforceable only under the laws of the State where made, and this contention was adopted by the Circuit Court of Appeals for the Fifth Circuit, when it stated: (Opinion, Appendix B):

> "What is here involved is merely a controversy between the parties as to the construction of a contract which allegedly arises out of the laws of the United States respecting collective bargains between employer and employees in interstate commerce; but the right of action asserted does not arise out of those laws but arises from the subsequent contractual re-

lations of the parties. The wrongful breach of such relations does not confer Federal Court jurisdiction unless there is diverse citizenship."

We submit that that statement by the Fifth Circuit Court of Appeals is in direct opposition to the declared purposes of Congress in enacting the labor legislation herein referred to, and is contrary to all the decisions by this Court in passing on such enactments. As stated by this Court in the case of *Virginian Ry. Company vs. System Federation* No. 40, *supra:*

> "More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern . . . .
>
> "The decree is authorized by the statute and was granted in an appropriate exercise of the equity powers of the Court."

**Specification of Error No. 2.**

The Labor Management Relations Act was enacted by Congress on June 23, 1947, effective August 23, 1947. Section 185 (a) Title 29, USCA, being a part of that act, provides for suits for violation of contracts such as the one now under consideration, to be brought in the Federal Courts.

The contract sued on provided that it should remain in effect until May 16, 1947 and thereafter from year to

year unless terminated or modified as therein provided. It could be terminated only by notice from either party to the other of its desire to terminate same, at least thirty days prior to the initial expiration date. No such notice was given by either party and, accordingly, Petitioners state that the contract is still in full force, although Respondents herein have continuously refused since May 20, 1947 to comply with its provisions.

Petitioners submit that in addition to the jurisdiction inherent in Federal Courts of equity to enforce this contract, such jurisdiction was expressly conferred by the provisions of Section 185 (a) of the Labor Management Relations Act, above referred to.

This question, so far as we can determine, has never been decided by this Court; that is, so far as the Labor Management Relations Act is concerned. However, by implication and following the reasoning in analagous cases decided by this Court, we submit that the question has been determined in favor of Petitioners' contention.

See:

*National Labor Relations Board vs. Carlisle Lumber Company, 94 Fed. 2d. 138 (CCA) Cert. Den. 59 S. Ct. 1045, 304 U. S. 575, 82 L. ed. 1539.*

*Jeffery-DeWitt Insulator Company vs. National Labor Relations Board, 91 Fed. 2d. 134, Cert. Den. 58, S. Ct. 55, 302 U. S. 731, 82 L. ed. 565.*

*National Labor Relations Board vs. Remington Rand, 130 Fed. 2d. 919, Cert. Den. 58 S. Ct.*

*1046; 304 U. S. 576, 82 L. ed. 1540, rehearing den. 58 S. Ct. 1054, 304 W. S. 590, 82 L. ed. 1549; Cert. Den. 58 S. Ct. 1061, 304 U. S. 585, 82 L. ed. 1546.*

*Bethlehem Corporation vs. National Labor Relations Board, 114 Fed. 2d. 950, Cert. Den. 61 S. C. 448, 312 U. S. 710, 85 L. ed. 1141.*

None of the cited cases deal with the Labor Management Relations Act. The point involved in each of these cases was whether or not the National Labor Relations Act would apply in cases where controversies existed at the date of the passage of that Act. In each case, even though the employees concerned were at that date on strike, the Court held that those employees remained employees of the Company, and acquired such rights as were granted under the new Act. In passing on this point, this Court has stated:

> "The mere fact that the labor dispute had commenced prior to the passage of the Act does not withdraw the parties or the dispute from the regulatory power of Congress as to acts subsequently occurring." *(Jeffery-DeWitt Insulator Company vs. National Labor Relations Board, Supra.)*

In the instant case the dispute or controversy was current at the date of the enactment of the ~~NATIONAL~~ management LABOR RELATIONS ACT; according to the allegations of the original bill of complaint, it was a continuing controversy. According to the allegations of the amendment proposed, but disallowed, negotiations continued between the parties long after the passage of that Act, and long after that time the Company refused to

arbitrate the differences, according to the terms of the contract. We submit that under those undisputed allegations there can be no doubt but that Section 185 (a) of the Act expressly confers jurisdiction upon the Federal Courts to determine this controversy.

The Fifth Circuit Court of Appeals refused to adopt Petitioners' contention, stating:

> "The wrongful breach of such (contractual) relations does not confer federal court jurisdiction unless there is diverse citizenship". (Appendix B.)

In so holding, we submit that Court entirely ignored Section 185 (a), which specifically confers federal jurisdiction in suits for wrongful breach of a contract, and further ignored the above cited decisions by this Court which hold by analogy, at least, that, that Section applies where disputes were pending at the date of its enactment.

## CONCLUSION.

For the foregoing error, we submit that the Court below has wrongfully denied petitioners their right to sue in these causes in the Federal Courts, for which Petitioners pray a review of the judgment of the Circuit Court of Appeals for the Fifth Circuit herein, and upon such review a reversal of the judgment and such other relief as to which Petitioners may be deemed entitled.

Respectfully Submitted,

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## APPENDIX "A".

## UNITED STATES COURT OF APPEALS FIFTH CIRCUIT.

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**Nos. 12504, 12505.**

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**AMALGAMATED ASS'N OF STREET, ELECTRIC RAILWAY & MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ET AL.,**

**versus**

**SOUTHERN BUS LINES, INC., (two cases).**

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**Feb. 24, 1949.**

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SIBLEY, Circuit Judge: These actions, brought by a labor union as a collective bargaining agency, joined by one employee, against Southern Bus Lines, Inc., as employer, are founded on the same collective contract but seek different relief. Both were dismissed for lack of venue in the district court for the Southern District of Mississippi, and because that court, if a proper venue, was *forum non conveniens*. The two appeals taken present the same questions.

The union is unincorporated, but has its headquarters at Shreveport, Louisiana. The employee plaintiff is an officer of the union and resides in the Southern District of Mississippi. The Southern Bus Lines is a corporation of Louisiana with its principal office at Alexandria, Louisiana, where all its records are and its officers reside, and where the Collective bargaining was made. Its business of running busses is done and the collective bargain applies throughout several States, including Mississippi. In order to do business in Mississippi it has appointed an agent in that State to receive service of process in any suit. Federal jurisdiction is rested on the contention that the controversy arises out of the laws of the United States about collective bargains between employer and employees in interstate commerce. In one action it is claimed that the employer refused to arbitrate a difference as provided by the collective contract and the employees struck to force arbitration; and the relief sought is damages for loss of wages during the strike. In the other action the relief sought is a mandatory injunction to compel arbitration. We are not here concerned with the proper construction of the collective contract, or the appropriateness of either relief, which are questions not reached in the district court; but we consider only whether there is venue in the Southern District of Mississippi; and if so whether the forum is so inconvenient as to justify dismissal.

(1, 2) These actions were filed and dismissed before the revision of Title 28 of the United States Code Annotated took effect. In Section 1391 (c) thereof it is provided: "A corporation may be sued in any judicial

district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." These plaintiffs could today dismiss their appeal and bring their actions in the Southern District of Mississippi under this section. But the section is not retroactive, and does not affect the merits of the cause, and we feel bound to review the dismissal under the law as it stood when the actions were filed. That former law, as expounded in *Neirbo Co. v. Bethlehem Steel Shipbuilding Corp.*, 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 128 A. L. R. 1437, gave venue as against this corporation in the Southern District of Mississippi, for it had, in order to do business in that State, complied with a statute which required it to appoint an agent in the State "upon whom service of process may be had in the event of any suit against said corporation." The agent resided in the Southern District of Mississippi, if that fact is of importance. It is immaterial that the case is not one in which federal jurisdiction rests solely on diversity of citizenship. The basis of the Neirbo decision is that the appointing of the agent under such a statute is a consent by the corporation to be sued in the State which waives the right to be sued only in the district of which it is an inhabitant, irrespective of the basis of federal jurisdiction. The present cases arise in part out of the business which the Bus Lines sought to do in Mississippi.

(3, 4) As to *forum non conveniens* most recently discussed in *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055, we again must differ with the

district court. The forum chosen in Mississippi is not seriously distant from that across the river in Louisiana, there is no prospect of numerous witnesses to be called from Louisiana at great inconvenience or expense to the Bus Company, and the law of Louisiana is not that to be applied. These cases indeed are very likely to go off on questions of law. Dismissal for inconvenience is not to be visited except when the choice of forum is a real hardship, or an imposition on the court. But here again we meet the Revision of Title 28, for Section 1404 providing for a change of venue is: "(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." This section applies to pending cases, and these actions might have been brought in the Western District of Louisiana where the principal office of the Bus Lines is. Transfer is a less drastic matter than dismissal, for it involves no loss of time or pleading or costs; and no doubt a broader discretion may be exercised in ordering it. The dismissal on the ground of inconvenience must also be reversed, but without prejudice to a consideration of a change of venue.

The judgments appealed from are set aside and the causes remanded for further proceedings not inconsistent with this opinion.

## APPENDIX "B".

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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**No. 13,389.**

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**AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,**

**Appellants,**

**versus**

**SOUTHERN BUS LINES, INC.,**

**Appellee.**

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**Appeal from the United States District Court for the Southern District of Mississippi.**

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(May 10, 1951.)

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Before HUTCHESON, Chief Judge, and McCORD and BORAH, Circuit Judges.

BORAH, Circuit Judge: The plaintiffs-appellants, Amalgamated Association of Street, Electric Railway and

Motor Coach Employees of America, Division No. 1127, a labor organization, brought this action for the benefit of the plaintiff R. E. Harper, and all other union members and employees of defendant Southern Bus Lines, Inc., who are similarly situated, to compel the defendant-appellee to arbitrate proposed changes in an alleged existing contract of employment. The appellee moved to dismiss the complaint for want of jurisdiction and for failure to state a claim upon which relief could be granted. The District Court held that the allegations in the complaint did not state a ground for relief, and from the ensuing judgment of dismissal, this appeal was taken.

While the assignments of error relate to the court's dismissal of the case on the merits, the question of jurisdiction has been raised in argument and must be first considered.

As grounds for jurisdiction, the complaint alleges "that this suit is based upon facts arising out of Interstate Commerce and under a contract between the plaintiffs and the defendant involving interstate transportation and, therefore comes within the provisions of the statutes of the United States of America governing the interstate transportation of passengers, freight and other commodities, and is controlled by the laws of the United States and the contract hereinafter referred to which was made pursuant to the obligations of all of the parties to contract for the interstate transportation above referred to." The complaint then alleges that the Union, acting for and on behalf of its members, entered into a contract with the defendant effective May 16, 1947; that under the

terms of the agreement if modification or termination of the contract was desired, it was the duty of either party to give notice in writing to the opposite party of that desire at least thirty days prior to May 16, 1947, the expiration date of the original year of the contract; that on the 14th day of April, 1947, the plaintiffs gave proper notice to the defendant of their desire to have certain modifications made in the contract and the defendant countered with a like proposal; that plaintiffs and the defendant negotiated for many days on the subject of the modifications of the existing contract and when it became apparent that no agreement could be reached, the plaintiffs demanded arbitration of the issues, in conformity with the contract, but the defendant refused and still refuses to accede to this request and because of this consistent refusal plaintiffs are entitled to a mandatory injunction, requiring the defendant to arbitrate with the plaintiffs all issues between them.

Upon the allegations of the complaint, we think it clear that the court below did not have jurisdiction over this controversy. No facts are alleged upon which the conclusion can legitimately be based that the District Court independently of the arbitration agreement would have jurisdiction of the "subject matter of a suit arising out of the controversy between the parties" as required by Section 4 of the Federal Arbitration Act, 9 U. S. C. A. Sec. 4. *Agostini Bros. Building Corporation v. United States*, 4 Cir., 142 F. (2) 854, 857. No allegation is made that the amount in controversy exceeds $3,000, and more important, the complaint admits that there is no diversity of citizenship between the parties. The litiga-

tion therefore is halted at the threshold by the lack of facts which open the door to federal litigation unless there are to be found in the complaint sufficient allegations to disclose that the controversy is one which arises "under the Constitution, laws, or treaties of the United States," Title 28, Sec. 1331, U. S. C. A., and "the matter in controversy exceeds the sum or value of $3,000."

Nowhere in the complaint is it alleged that any provision of the federal constitution or a federal treaty or a law of the United States is involved. Nor is it alleged that there is a substantial dispute between the parties respecting the validity, construction or effect of some law of the United States, upon the determination of which the result depends.

> "It is not enough that grounds of jurisdiction other than diverse citizenship may be inferred argumentatively from the statements in the bill, for jurisdiction cannot rest on any ground that is not affirmatively and distinctly set forth." Shulthis v. McDougal, 225 U. S. 561, 569. The question of jurisdiction must be determined from the face of the complaint. City Railway Co. v. Citizens' Street Ry. Co., 166 U. S. 557; Cuyahoga-River Power Co. v. City of Akron, 240 U. S. 462. The jurisdiction of a federal court is never to be presumed, but must be made to affirmatively appear. Grace v. American Central Ins. Co., 109 U. S. 278, 283; Neel v. Pennsylvania Co., 157 U. S. 153.
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> "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really

> and substantially involves a dispute or controversy respecting the validity, construction, or effect of such a law, upon the determination of which the result depends." *Shulthis v. McDougal, supra.*

In *Gulley v. First National Bank*, 299 U. S. 109, 112 the Supreme Court re-affirmed the same doctrine and speaking through Mr. Justice Cardozo said:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statutes, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. Starin v. New York, 115 U. S. 248, 257, 6 S. Ct. 28, 29 L. Ed. 388; First National Bank v. Williams, 252 U. S. 504, 512, 40 S. Ct. 372, 374, 64 L. Ed. 690. The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. Ibid; King County v. Seattle School District, 263 U. S. 361, 363, 364, 44 S. Ct. 127, 128, 68 L. Ed. 339."

Viewing the case at bar against this background of established principle, we do not find in it the elements of federal jurisdiction. What is here involved is merely a controversy between the parties as to the construction of a contract which allegedly arises out of the laws of the United States respecting collective bargains between employer and employees in interstate commerce; but the right of action asserted does not arise out of those laws but only arises from the subsequent contractual relations

of the parties. The wrongful breach of such relations does not confer federal court jurisdiction unless there is diverse citizenship. *Barnhart v. Western Maryland Ry. Co.*, 128 F. (2) 709.

Since the court was without jurisdiction, it is unnecessary to consider whether the complaint states a claim upon which relief could be granted. The judgment of the District Court is vacated and set aside and the case is remanded to that court with instructions to dismiss for want of jurisdiction.

## APPENDIX "C".

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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**No. 13,388.**

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**AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,**

**Appellants,**

**versus**

**SOUTHERN BUS LINES, INC.,**

**Appellee.**

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**Appeal from the United States District Court for the Southern District of Mississippi.**

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(May 10, 1951.)

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Before HUTCHESON, Chief Judge, and McCORD and BORAH, Circuit Judges.

BORAH, Circuit Judge: The jurisdictional point involved in this case is the same as that involved in the case of *Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Division No. 1127, Etc., Et Al. v. Southern Bus Lines, Inc., No. 13,389,* this day decided; and, on the authority of that decision, the judgment of the District Court is vacated and set aside and the case is remanded to that court with instructions to dismiss for want of jurisdiction.

## APPENDIX "D".

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 13,939.

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,

Appellants,

versus

SOUTHERN BUS LINES, INC.,

Appellees.

No. 13,940.

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY, AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION No. 1127, ETC., ET AL.,

Appellants,

versus

SOUTHERN BUS LINES, INC.,

Appellees.

Appeals from the United States District Court for the Southern District of Mississippi.

(January 14, 1953.)

Before HUTCHESON, Chief Judge, and HOLMES, and RIVES, Circuit Judges.

HUTCHESON, Chief Judge: When these two cases were here before, the appeals were from judgments dismissing

the complaints on the merits for failure to state a cause of action.

Of the opinion that they should have been dismissed for want of jurisdiction, this court reversed the judgments and remanded the causes, with specific directions to dismiss them for want of jurisdiction.

This time the appeals are from judgments entered not only in accordance with the law of the state as established on the former appeals, but in execution of, and in precise accord with, our mandates.

In such circumstances, unlike where judgments of reversal are general, appeals from the judgments entered on the mandates present nothing for our review. The appeals are, therefore, dismissed.